



BCI CORP.

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September 11, 1997

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Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

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via Federal Express

Re: Comments of Brittan Communications International Corporation in regard to CC Docket No. 94-129

Dear Sirs:

Enclosed please find an original and twelve (12) copies of Brittan Communications International Corporation's Comments in regard to CC Docket No. 94-129, *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 - Policies and Rules Concerning Unauthorized Changes of Consumer' Long Distance Carriers.*

Please date-stamp one copy and return it to us in the enclosed envelope. If you have any questions, please do not hesitate to contact me at your earliest convenience.

Sincerely yours,

Robert W. Taylor
Director of Regulatory Affairs and Corporate Counsel

encl.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Telecommunications Act of 1996)
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Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

COMMENTS OF
BRITTAN COMMUNICATIONS INTERNATIONAL CORPORATION

BRITTAN COMMUNICATIONS
INTERNATIONAL CORPORATION

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Dated: September 11, 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**COMMENTS OF
BRITTAN COMMUNICATIONS INTERNATIONAL CORPORATION**

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Introduction

Brittan Communications International Corporation ("BCI"), an interexchange carrier providing resold long distance service throughout the United States and the inventor of the telecommunications industry's leading third party verification platform, submits the following comments in response to the Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration (the "Notice") in the above-captioned proceeding.

Summary of Comments

In this project, the Commission considers adopting new rules and procedures concerning changes of a consumer's local or long distance telecommunications carrier. As an interexchange carrier providing long distance services throughout the United States, BCI will be subject to any rules adopted in this proceeding and, as such, files these comments to urge the Commission to make certain modifications to its proposed rules.

Although BCI fully supports the Commission's efforts to ensure that any change in a customer's local or long distance service is appropriately verified and adequate

protections are afforded consumers, BCI respectfully submits that the Commission's proposed rules should be modified in several critical respects.

First, the rules should impose even stricter standards for the verification of telemarketing sales. Such protections would be afforded by requiring carriers to verify a customer's order to change carriers by either having or obtaining signed written authorization from the consumer requesting the change or having the oral order confirmed by an independent third party verification company. BCI maintains that sending written confirmation letters does not afford adequate protection for sales generated through telemarketing.

Second, in conducting a verification of a telemarketing sale, the independent third party verification company should be required to obtain and verify the telephone number of the customer who orders service, whether or not the order is done through a customer initiated call or through an outbound telemarketing call from the carrier.

Third, a subscriber should be allowed to order or cancel a PIC freeze through any telecommunications carrier rather than the LEC exclusively. Furthermore, any PIC freeze transaction (order or cancellation) should be confirmed by an independent third party verifier regardless of which telecommunications carrier (local or long distance) receives the request from the subscriber.

Therefore, BCI respectfully requests that in the interest of the continued growth and development of consumer choice and telecommunications competition throughout the United States, the Commission clarify and modify its proposed rules in accordance with the following comments.

Discussion

I. VERIFICATION RULES

A. All Telemarketing Sales Should be Confirmed by Independent Third Party Verification or by Obtaining or Having Written Authorization from the Customer.

Telemarketing sales are inherently prone to abuse due to the oral nature of a consumer's purported order. A telemarketer can easily represent to his employer that a consumer ordered service when in fact the consumer did not. If such an order is processed, the consumer suffers great inconvenience by experiencing an unauthorized change in providers. Likewise, the communications company whose employee made the unauthorized change is responsible for the consequences of the change.

Monitoring every telemarketer's sales calls to ensure that every sales call is done in conformance with company policy and that a telemarketer does not misrepresent that a consumer ordered service is virtually impossible. Consequently, in order to achieve the goal intended by the proposed rules of ensuring all customers are protected from an unauthorized change in providers, it is imperative to require the industry to verify telemarketing sales in a manner which provides proof that the consumer indeed ordered service. BCI submits that only the letter of agency ("LOA") and independent third party verification accomplish this objective.

The LOA is a written order for service, signed by the consumer. Absent any other evidence that a customer ordered service over the telephone and without reducing the consumer's intent to a signed, written document, any disputes concerning whether an

order was made becomes a war of words. Neither the carrier which may have indeed received an authorization to change the customer's service in one case nor the consumer who may not have authorized a change in another case can predict the outcome of such a dispute.

Absent the written authorization from the consumer in the form of an LOA, verification of the oral order can only be accomplished if one or more witnesses can attest that the customer did order service and that the carrier had a reasonable basis for relying upon the order in providing service. The need for this witness is satisfied by having a neutral, independent third party make an objective determination of the transaction. This can be accomplished by requiring the verifier to obtain the customer's oral confirmation of the selection of the new carrier. Because this analysis is conducted before the carrier has the right to initiate service, the opportunity for slamming is minimized. In any event, if a carrier provides service even though the independent third party determines that the sale is not verifiable, then clearly the carrier would have slammed the customer and should receive appropriate punishment.

Independent third party verification is a necessary option for verifying telemarketing sales to ensure that competition flourishes and customer convenience is maximized. Industry experience with various forms of marketing shows that individuals who may respond to telemarketing, either inbound to the carrier or outbound to the prospective customer, do not or may not respond to written materials. Consequently, if a carrier does not already have a written order for service and sends the consumer who

orally orders service a form to complete, the consumer may forget to return the written order or delay in doing so.

BCI submits that having an independent third party witness the transaction affords the same protection that a written authorization from the customer provides. Therefore, BCI respectfully requests that telemarketing sales, whether made by a customer initiated call or a carrier initiated call, be limited to verification pursuant to Section 64.1100(a and c) of the proposed rules. Because the opportunity for slamming is just as great whether the carrier calls the prospective customer or an individual calls the carrier, both types of sales should be treated the same for verification purposes. Therefore, BCI requests that the Commission modify Section 64.1100 to limit verification of telemarketing sales to either use of independent third party verification or having or obtaining a written LOA. Verification of all other types of marketing sales could be accomplished under these methods as well. However, other marketing could also be verified under proposed methods in Sections 64.1100(b and d) which concern electronic verification and a confirming "welcome package".

B. The ANI of the Telephone Through Which a Customer Orders Service Must be Verified Through Independent Third Party Verification

In order to ensure that a customer's service is not changed without his authorization, it is imperative that the independent third party conducting the verification obtains not only certain information about the customer's order but verifies the source of the information (the automatic number identification ["ANI"] or telephone number of the phone through which the order and information was provided). Otherwise, an unscrupulous telemarketer could have an accomplice who could take names out of the phone book and pretend that he is someone listed in the phone book who wants to change carriers. Conceivably, a verifier would be unable to detect this fraud unless it was able to verify the number from which the customer placed a call to order or to verify his desire to change carriers. Likewise, if the third party verifier is conferenced in by the telemarketer to conduct the verification, the verifier would not be able to detect the fraud unless he could verify the telephone number which was dialed to reach the customer who ordered service. Without this critical information, the verifier would have to rely on the telemarketer's representation of the telephone number through which the purported customer is ordering service, thereby creating the opportunity for the telemarketer to conduct the above described fraud.

The Commission already recognizes the importance of the ANI by imposing this requirement on customer initiated calls in the existing and proposed Section 64.1100(b). BCI asks the Commission to extend this requirement to independent third party verification by modifying Section 64.1100(c) as follows:

An appropriately qualified independent third party operating in a location physically separate from the telemarketing representative has obtained:

- (1) the subscriber's oral authorization to submit the primary carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number); and
- (2) the ANI of the telephone through which the oral authorization was made. If the customer initiates the call to the telemarketer or the verifier, the verifier would have to obtain and verify the originating ANI information for that call as received by the telecommunications carrier or the verifier through the local switching system. If the telecommunications carrier conferences in the third party verifier to conduct the verification, the verifier would have to obtain and verify the digits of the ANI as dialed by the telemarketer to reach the customer or the ANI information as received by the telemarketer for customer initiated calls.

By knowing the ANI of the telephone through which an oral order for service is made, the verifier will be able to verify that either the customer for the ANI which was switched or someone who had apparent authority to make the change indeed ordered service. Verification of this information thereby eliminates the potential that an unscrupulous telemarketer slams customers by having an accomplice order service or respond to repeated calls by the telemarketer in which the accomplice assumes the identity of unsuspecting customers. Recognizing the importance of this ANI information, BCI incorporated this verification method into its third party verification platform. Sales which BCI conducts through telemarketing are verified by an independent third party which uses this platform.

C. WELCOME PACKAGE

BCI believes that the welcome package verification method contained in Section 64.1100(d) remains a viable verification option only for marketing methods other than telemarketing. Due to the concerns identified above concerning telemarketing sales, BCI respectfully requests that the Commission exclude the welcome package verification method for telemarketing sales.

D. APPLICABILITY TO ALL TELECOMMUNICATIONS CARRIERS

BCI believes that the proposed verification rules should apply to all telecommunications carriers, regardless of the type of telecommunications services they provide. The slamming problem will only increase if changes of a subscriber's local service is not subject to the same requirements that apply for long distance changes.

II. PIC FREEZES

A simple way for a consumer to protect himself from being a victim of slamming is to request that his carrier selection be frozen through a PIC freeze through his local service provider. However, as the local service providers prepare for entering the long distance market, there is an opportunity for the local provider to use the PIC freeze option in an anticompetitive way. It is foreseeable that a local exchange carrier could have been or will aggressively market PIC freezes to its customer base in anticipation of the LEC's own entry into the long distance service market within its own region.

PIC freezes can generally only be canceled by the customer through the LEC. Therefore, if a customer decides to change long distance carriers by calling the new carrier directly, the customer must still call the LEC to have the PIC freeze removed. In the call to the LEC to accomplish this task, the LEC could dissuade the customer from changing carriers by marketing its own service to the customer. Such conduct should be prohibited by adopting rules which eliminate the opportunity for misuse of a very viable self-defense mechanism for consumers.

In order to accomplish this objective, BCI believes the Commission should require that whenever a subscriber orders or cancels a PIC freeze on his account, this request should be confirmed by an independent third party verification company. This protection assures that a LEC does not mislead a subscriber in the PIC freeze order or cancellation process.

Additionally, a subscriber should be allowed to order or cancel a PIC freeze through any telecommunications carrier rather than the LEC. If the subscriber receives or orders its local and long distance service from a single provider other than a LEC, he should not be required to contact the LEC (an unrelated party) to order or cancel a PIC freeze. Although it is foreseeable that a long distance or competitive local service provider may misuse PIC freezes or illegally cancel a PIC freeze in order to accomplish a slam, the Commission can prevent this by requiring third party verification whenever a PIC freeze is ordered or canceled through any telecommunications carrier. This ensures that convenience to the customer is maximized.

III. LIABILITY FLOWS

A. **BCI Suggests That Although Carriers Should be Required to Disgorge All Revenues Gained from Acts of Slamming Customers, a Better Method of Imposing This Penalty Would be to Require a Full Refund of the Charges to be Allocated Between the Prior Carrier and the Customer.**

The intent of Section 258(b) of the Telecommunications Act of 1996, 47 U.S.C. 258(b), is to restore a slammed customer to the position he was in before the slam occurred, thereby making him whole. H.R. Conf. Rep. No. 104-458, 104th Cong., 2nd Sess. 136 (“...the Commission’s rules should also provide that consumers are made whole. Specifically, the Commission’s rules should require that carriers guilty of “slamming” should be held liable for premiums, including travel bonuses, that would otherwise have been earned by telephone subscribers but were not earned due to the violation of the Commission’s rules under this section.”); The Telecommunications Act of 1996, Law & Legislative History (Pike & Fischer ed., 1996) (“...the legislative history makes clear that the FCC is expected to also ensure that consumers victimized by slamming are made *whole in all respects*; it must even hold the guilty carrier liable for all premiums, including travel bonus mileage, that would have been earned by the victimized subscriber had the change in carriers not occurred.”)(emphasis added).

Beyond the mandate that slamming carriers make a slammed subscriber whole, little direction is given to the Commission for accomplishing this objective. As the Commission has recognized already, “[t]he Act does not, however, address whether...charges collected from the unauthorized carrier should be returned to the subscriber who has been slammed.” Notice at para. 25. Although Section 258(b) of

the Act does state that a slamming carrier shall be “*liable* to the carrier previously selected” for charges paid by the subscriber to the slamming carrier, clearly payment alone of revenues garnered by a slamming carrier to the prior carrier does not make the slammed subscriber whole.

Creation of liability alone does not mean that disgorgement of *all* the monies paid by the subscriber necessarily must be made to the prior carrier. The intent of this Section, other than making the subscriber whole, is to make the prior carrier whole, as well. H.R. Conf. Rep. No. 104-458, 104th Cong., 2nd Sess. 136 (“It is the understanding of the conferees that...the carrier violating the Commission’s procedures must reimburse the original carrier for forgone revenues”). For this reason, Congress created a liability to the prior carrier for the revenues collected by the slamming carrier in order to ensure the prior carrier recovers his forgone revenue.

The creation of a liability merely creates an obligation. Without clearly defined parameters for how and when such liability arises, the obligation is meaningless. Triggering of an obligation can be based on a variety of factors. In fact, the Act has not restricted the Commission’s authority for triggering this liability and clearly recognizes that the Commission will need to implement rules to define how and when such liability will arise by stating that such liability shall be established “with such procedures as the Commission may prescribe.” 47 U.S.C. 258(b).

BCI urges the Commission to adopt rules that ensure that the slammed subscriber and the prior carrier are made whole in the most fair and feasible manner for all parties involved in this resolution process – the subscriber, the prior carrier, and the

slamming carrier. BCI respectfully suggests that a better procedure can be created than the one envisioned under the currently proposed refund provisions in Sections 64.1160(b) and 64.1170. BCI proposes that a slamming carrier be required to disgorge revenues collected from the subscriber by allocating payment of the money collected to the subscriber who made the payment and the prior carrier which lost the revenue for the subscriber, all in a manner that will make each whole.

B. The rules should ensure that the prior carrier receives payment, either directly from the subscriber or indirectly from the slamming carrier, for the telecommunications services the slammed subscriber used.

Any regulation that creates the opportunity for an unscrupulous individual to escape liability for telecommunications services he uses by alleging that a carrier slammed him would create a very dangerous situation for the telecommunications industry. Under such a scenario, it is foreseeable that unscrupulous individuals could induce a carrier to make an unauthorized change or slam by misrepresenting to the carrier that the individual ordering service is the customer of record for a given telephone number when in fact he is not. The customer of record for the account could have another individual make the misrepresentations to the carrier, knowing that at any point in the future, he can claim a slam occurred and will therefore not have to pay for the local or long distance service he had the benefit of using.

Some might argue that this scenario is unlikely and that there is no history of this problem, thereby making such drastic changes to the proposed rule unnecessary. However, the industry already has seen an increasing fraud problem due to individuals

who obtain new service from carriers with the intent of never paying for the service. In fact, the Justice Department recently approved a national database and the sharing of information between carriers concerning individuals who do not pay their phone bills in an effort to curb this problem. See Stephanie N. Mehta, "Telecommunications Companies Unite to Track Nonpaying Phone Customers," Wall Street J., Sept. 8, 1997, at A13A ("In the already competitive long-distance industry, fraud is behind much of the uncollectibles. Sprint Corp. said roughly 60% of its bad billings in the residential market are caused by 'people who never pay one invoice; people who come into our service with the intent of defrauding us.'" Last year, this uncollectibles problem accounted for \$6 billion or three percent of total revenues for the telecommunications industry.)

BCI has serious concerns that if the Commission adopts rules which would allow customers to avoid payment for telecommunications services by alleging that they were slammed, the already rampant fraud problem could worsen drastically. The long distance and cellular industries have suffered for years from multi-billion dollar losses due to toll fraud perpetrated by a small number of unscrupulous individuals. The Commission should ensure that the proposed rules to not create an opportunity for fraud.

Conclusion

BCI supports the Commission's efforts to promulgate carrier selection rules that protect consumers from unauthorized carrier changes. In order to prevent the unauthorized change problem inherent with telemarketing, BCI respectfully requests

that the Commission modify its proposed rules to require all telemarketing sales to be verified by an independent third party verification company or evidenced by a written order for service. BCI also requests that the Commission clarify or modify the rules as described herein to ensure that the protective measures imposed do not interfere with the consumer's ability to obtain competitive services or the ability of new entrants to bring competitive choices to consumers.

Respectfully submitted,

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